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Brief of Atty. Gen'l (Richards) for United States.

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# In the Supreme Court of the United States.

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J. C. ANDERSON, ET AL., v. THE UNITED STATES. } No. 479.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

## BRIEF FOR THE UNITED STATES.

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## BRIEF FOR THE UNITED STATES.

### STATEMENT.

The Kansas City Stock Yards Company is a corporation owning the Kansas City stock yards. The land devoted to stock-yard purposes consists of 160 acres, and is situate on both sides of the line between the States of Missouri and Kansas. The Kansas City Stock Yards Company owns an office building which is so located that about one-half thereof is in each of the States of Missouri and Kansas. The land owned by the said stock-yards company consists of yards, pens, chutes, railway

tracks, sheds, scales, buildings, and other means and appliances for receiving, yarding, feeding, purchasing, selling, and shipping cattle and other live stock.

The market at Kansas City is the second largest live-stock market in the world. The cattle received at these stock yards for several years past have exceeded 1,800,000 head of cattle annually. These cattle are shipped to the Kansas City stock yards from the States of Kansas, Nebraska, Colorado, Texas, Missouri, Iowa, and Arkansas, the Indian Territory, and the Territories of Oklahoma, Arizona, and New Mexico. These cattle so shipped and received at the Kansas City stock yards consist of the various classes of cattle, as follows:

First, those that are intended for exportation to the European markets; second, those that are intended for the Eastern markets at St. Louis, Chicago, Buffalo, New York, and other cities in the East; third, of those that are called "packers" and are intended to be sold to the various packing houses located at Kansas City; and fourth, those cattle commonly called and known as "stockers" or "feeders," and being such as are intended to be sold to farmers and to feeders from the different States and Territories, who reship them to their several places of feeding. Adjacent to these stock yards at Kansas City are the large packing houses which handle more than one-half of all the cattle received at these yards. All the cattle arriving at these stock yards are consigned to some one of the commission firms, which have offices and do business at the stock yards, by whom they are sold to the various classes of purchasers. A

large number of the cattle shipped to this market are shipped on through bills of lading to St. Louis, Chicago, and other cities in the East, with the privilege accorded to the consignor or shipper to test the market at Kansas City, and, if the prices justify, to sell thereat; and if sales are not effected, after being rested, watered, and fed, they are reshipped to the various places of destination.

The persons who buy these cattle at the Kansas City Stock Yards from the commission firms consist of the following classes of persons: First, the commission firms that have orders from their customers at other points; second, men employed by and who purchase for the packing houses located at Kansas City; third, individual farmers and feeders who come from a distance to the market and go upon the yards and buy such cattle as they need; fourth, a class of men who are known upon the yards as "speculators" or "yard traders." Some of these "speculators" or "yard traders" obtain credit from the various commission firms—that is, they make purchases for themselves, but in payment for the cattle, by an arrangement and agreement with some commission firm, they draw checks upon said commission firm, which said amounts are repaid when the cattle are sold. This last class of purchasers—that is, the "speculators" or "yard traders"—deal more particularly in that class of cattle called "stockers" or "feeders," but buy all classes of cattle received at the yards.

After having made a purchase, if there be any suited for exportation they sell them to some exporter or export them themselves. Those that are suited for the Eastern

markets they ship to said markets or sell to a commission firm that may have an order from some Eastern market for such cattle. Those that are suitable for packing are sold by these "speculators" or "yard traders" to purchasers for the packing houses, and the "stockers" or "feeders" they sell either direct to farmers and "feeders" or to some commission firm that may have an order for this class of cattle. The cattle received at the Kansas City stock yards are placed in the various pens, which are located in the State of Missouri or the State of Kansas indiscriminately, and cattle that are in pens located in the State of Kansas may be sold to purchasers who reside in Missouri and are delivered to them, and cattle located in the State of Missouri are sold to purchasers who may be located in Kansas or other States and delivered, and cattle are reshipped for export and to other markets which at the time may be located in pens in one State or located in pens in the other State, and in the traffic of these cattle at the yards they are moved back and forth from pens in Missouri to pens in Kansas and from pens in Kansas to pens in Missouri.

Prior to the month of September, 1895, there were a large number of persons engaged as "speculators" or "yard traders" at the Kansas City stock yards in these cattle. In the month of September, 1895, these appellants, numbering 143 persons, who were all "speculators" and "yard traders," organized themselves into a voluntary unincorporated association, known and designated as "The Traders' Live Stock Exchange." The government of the said exchange is vested in a board of

directors, and a president, vice-president, secretary, and treasurer. At the time of the adoption of the articles of association these appellants adopted certain rules for the government and the management of said exchange, which are found in the transcript of the record, on page 32 and following. At first a membership fee of $10 was required for each member, which was afterwards raised to the sum of $250, and on August 1, 1896, the membership fee was raised to $500. By rule 10 they bound themselves not to recognize any "yard trader" not a member of the exchange; by rule 11 they prohibited any member from forming a partnership with a person not a member of said exchange, and by rule 12 they prohibited any member of the exchange from employing any person who was not a member of said exchange.

The objects, aims, and purposes of this exchange was to drive every "speculator" and "yard trader" from the Kansas City stock yards who was not a member of said exchange. Commission firms who aided a "yard trader" or "speculator" on the market who was not a member of said association, by lending him credit, were notified to desist and cease doing business with said nonmember; and if said commission firm refused to do so they were at once boycotted by the members of this association, and none of the members would purchase any cattle held by said commission firm for sale. Where commission firms sold cattle to "speculators" or "yard traders" who were not members of this exchange, they were notified by the members of the exchange to cease making sales to "speculators" who were not members of the Traders' Live

Stock Exchange, and if they failed so to do were at once boycotted by all the members of the association, who refused to purchase, or even look at, any cattle which said commission firm might have on hand for sale. The consequence was that within a very short time every "speculator" and "yard trader" at the Kansas City stock yards was forced out of business and driven from the yards, being unable to purchase cattle from and to sell them to any person at the yards, or to obtain employment from any commission firm, or any member of the exchange, to either buy or sell cattle. These facts are all abundantly established by the affidavits filed in support of the bill, which are found in the transcript, beginning on page 12. These facts were found to be true by the judge of the circuit court of the western district of Missouri when he rendered the decree of temporary injunction, which is found on page 43 of the transcript; and these facts are also further found from the record to be true by the circuit court of appeals of the eighth circuit in certifying questions to this court. (See page 58 of the Transcript of Record.)

On the 7th day of June, 1897, the United States attorney for the western district of Missouri filed in the circuit court of the United States in the western division of the western district of Missouri, at Kansas City, a bill in equity on behalf of the United States against these appellants, which said bill is found beginning on page 5 of the transcript of the record, and charges, in effect, that the traffic in these cattle at the Kansas City stock yards was interstate commerce, and that these appellants had entered into a combination and agreement in

restraint of trade, by prohibiting other persons not members of their exchange from dealing in cattle on said yards.

The case was heard on the 1st day of July, 1897, and on July 19, 1897, the decree of temporary injunction was handed down, which is found in the transcript of record, beginning on page 43. Thereafter, an appeal was taken by the appellants to the United States circuit court of appeals for the eighth circuit, and thence brought by writ of *certiorari* to this court.

## BRIEF AND ARGUMENT.

There are three questions involved in this case:

First, whether or not the cattle received at the Kansas City stock yards are the subjects of interstate commerce;

Second, whether the traffic in them at the stock yards is interstate; and

Third, whether or not the purposes, objects, aims, and conduct of the appellants is an interference with this trade.

### I.

If a legislative construction of the traffic in these cattle is of any value, we suggest that as early as 1873 Congress recognized traffic in these cattle as interstate commerce, and for its regulation and control enacted laws now appearing as sections 4386, 4387, 4388, 4389, and 4390 of the Revised Statutes of the United States, requiring that all carriers of live stock should not confine the same for a longer period than twenty-eight consecutive hours without unloading the same for rest,

water, and feed for the period of at least five consecutive hours. Congress also recognized the traffic in these cattle at the Kansas City stock yards as interstate commerce in the act of May 29, 1884, First Supplement Revised Statutes, page 794; and the acts amendatory thereof provided for the inspection not only of the cattle before slaughter, but of their meat after slaughter.

In the case of the *United States* v. *Hopkins et al.* (82 Federal Reporter, p. 529) Judge Foster of the district of Kansas held that these cattle were the subjects of interstate commerce, and the traffic in them at these very yards was interstate traffic. This was a case between the United States and the Kansas City Live Stock Exchange, which was composed of the commission firms doing business at Kansas City in these same cattle.

Unquestionably, when the transportation of these cattle began from the various States and Territories to the Kansas City Stock Yards they became clothed with the quality of interstate commerce.

"It can not be denied that those who are engaged in the transportation of persons or property from one State to another are engaged in interstate commerce." (*United States* v. *Trans-Missouri Freight Association*, 166 U. S., 290.)

"Goods become a part of interstate commerce at the time in which they commence their final movement from the State of their origin to that of their destination.

"There must be a point of time when they cease to be governed exclusively by the domestic law, and begin to

be governed and protected by the national law of commercial regulation, and that moment seems to us to be a legitimate one for this purpose in which they commence their final movement for transportation from the State of their origin to that of their destination." (*Coe* v. *Errol*, 116 U. S., 517.)

"The transportation of persons from one State into another is interstate commerce." (*N. & W. R. R. Co.* v. *Pa.*, 136 U. S., 114.)

"Beyond all question, the transportation of freight, or the subjects of commerce for the purpose of exchange or sale, is a constituent of commerce itself.

"Nor does it make any difference whether this interchange of commodities is by land or by water. In either case, the bringing of the goods from the seller to the buyer is commerce, and among the States it must have been principally by land when the Constitution was adopted." (*The P. & R. R. Co.* v. *Pa.*, 15 Wallace, 232.)

"Whenever a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced." (*Daniel Ball* v. *United States*, 10 Wallace, 557.)

"The shipment of merchandise from one State to another is interstate commerce, and any requirement of a State statute in respect to such commerce in conflict with the requirements of the interstate commerce act is unconstitutional." (*Baird* v. *St. L., I. M. and S. Ry. Co.*, 41 Federal Reporter, 592.)

"The transportation of freight and passengers from State to State is interstate commerce, and the regulation

thereof by States is forbidden by the Federal Constitution. Such commerce, whether carried on by individuals or corporations, is under the exclusive jurisdiction of Congress." (*Indiana* v. *Pullman Palace Car Co.*, 16 Federal Reporter, 193.)

Telegraphic messages passing over lines from one State to another constitute a portion of interstate commerce.

*Western Union Telegraph Co.* v. *James*, 162 U. S., 650.

*Postal Telegraph and Cable Co.* v. *Charleston*, 153 U. S., 692.

*Lelout* v. *Mobile*, 127 U. S., 640.

*Western Union Telegraph Co.* v. *Ratterman*, 127 U. S., 411.

*Western Union Telegraph Co.* v. *Pendleton*, 122 U. S., 327.

*Western Union Telegraph Co.* v. *Texas*, 105 U. S., 460.

*Pensacola Telegraph Co.* v. *Western Union Telegraph Co.*, 96 U. S., 1.

*Western Union Telegraph Co.* v. *Norman*, 77 Federal Reporter, 13.

*St. Louis* v. *Western Union Telegraph Co.*, 39 Federal Reporter, 59.

## II.

Is the trade in these cattle at the Kansas City stock yards interstate trade? That is, these cattle being clothed with the quality of interstate commerce when their transportation began from the various States and Territories to the Kansas City stock yards, do they lose the quality of interstate commerce when reaching the

stock yards, or do they remain the subjects of interstate commerce, and the traffic in them, interstate traffic, or interstate commerce?

These cattle having once assumed the character of interstate commerce, do not lose it when they reach the Kansas City stock yards, but continue the subjects of interstate commerce until they are finally sold and become mingled with the common mass of the property in the States of Missouri or Kansas. Neither State could tax the cattle upon their arrival and being penned at the yards in pens situate in said State prior to a sale thereof.

"The right to import from one State into another carries with it by necessary implication the right of sale at the place where the importation terminates." (*Lyng* v. *Michigan*, 135 U. S., 161.)

"The power vested in Congress to regulate commerce with foreign nations and among the several States, and with the Indian tribes, is the power to prescribe the rule by which that commerce is to be governed, and is a power complete in itself, acknowledging no limitations other than those prescribed in the Constitution. It is coextensive with the subject on which it acts, and can not be stopped at the external boundary of a State, but must enter its interior, and must be capable of authorizing the disposition of the articles which it introduces, so that they may become mingled with the common mass of property within the territory entered."

*Leisy* v. *Hardin*, 135 U. S., 100.
*Brennan* v. *The City of Titusville*, 153 U. S., 289.

The time at which commerce ceases to be interstate is not the instant when the article enters the country, but when the importer has so acted upon it that it has become incorporated in and mixed up with the mass of property in the country.

The right of importation carries with it the right to sell. (*Leisy* v. *Hardin*, 135 U. S., 166.)

A State is bound to receive and to permit the sale by the importer of any article of merchandise which Congress authorizes to be imported. (*License Cases*, 46 U. S. (5th Howard), 504.)

Not until an article has been sold does it become mingled with the common mass of property within a State, and until that time it remains interstate commerce.

The right of transportation from abroad, and of transportation from one State to another, includes by necessary implication the right of the importer to sell at the place where transportation terminates; for the very purpose and motive of that branch of commerce which consists in transportation is that other and consequent act of commerce which consists in the sale and exchange of the commodities transported.

*Brown* v. *Maryland*, (25 U. S. (12 Wheaton), 419.
*Bowman* v. *C. & N. R. R. Co.*, 125 U. S., 465.

Goods imported from foreign countries and from one State to another continue interstate commerce, and can not be taxed by the State so long as they remain the property of the importer and continue in the original form or packages in which they were imported; the right to sell without any restriction imposed by the State being

a necessary incident of the right to import. (*Coe* v. *Errol*, 116 U. S., 517.)

Foreign goods imported and sold in the original form or package do not become incorporated into the general property of the State until after a sale. (*Cook* v. *Pennsylvania*, 97 U. S., 566.)

The power which insures uniformity to commercial regulation must cover the property which is transported as an article of interstate commerce from hostile legislation until it has mingled with and become a part of the general property of the State or country. (*Welton* v. *Missouri*, 91 U. S., 275.)

It was held in *Brown* v. *Maryland* (12 Wheaton, 419) and reaffirmed in *Welton* v. *Missouri* (91 U. S., 275) that when the importer had so acted upon the thing imported it had become incorporated and mixed up with the mass of property in the country, it had lost its distinctive character as an import, and became subject to the taxing power of the State. But that while remaining the property of the importer in the original form and package, it remained interstate commerce.

Not until merchandise in the original packages is once sold by the importer does it become subject to taxation by the State. (*Waring* v. *Mobile*, 8 Wallace, 110.)

Sales by the importer are held to be exempt from State taxation, because the tax, if permitted, would intercept the import in the way to become incorporated with the general mass of property, and would deny it the privilege of becoming so incorporated until it should have contributed to the revenue of the State.

There is no difference, in effect, between the power to prohibit the sale of an article and the power to prohibit its introduction. The one would be a necessary consequence of the other. No goods would be imported if none could be sold. (*Brown* v. *Maryland*, 12 Wheaton, 419.)

In this case it was further held that when the importer had so acted upon the thing imported that it became incorporated and mixed up with the mass of property in the country, it lost its distinctive character as an import and became subject to the taxing power of the State.

The object of importation is sale.

Commerce is intercourse.

One of its most ordinary ingredients is traffic.

To what purpose would the power to allow importation be given unaccompanied by the power to authorize the sale of the thing imported?

Sale is the object of importation.

It is an essential ingredient of that intercourse of which importation constitutes a part. It is as essential an ingredient, as indispensable as exportation itself. It must be considered as a component part of the power to regulate commerce.

Congress had the power not only to authorize importation but to allow the importer to sell.

The right to bring an article into a State carries with it the right to sell it. (*Spellman* v. *New Orleans*, 45 Federal Reporter, 3.)

An ordinance prohibiting a railroad company from allowing the sale of fruit, vegetables, or perishable fruit

is unconstitutional and void, where the merchandise affected comes from other States. *Spellman* v. *New Orleans*, 45 Federal Reporter, 3.)

The right to transport an article of commerce from one State to another includes the right to sell in original form or packages at the place where the transit terminates.

The right to introduce an article from one State into another carries with it the right to sell the article. (*In re Harmon*, 43 Federal Reporter, 372.)

Transportation of commodities among the several States, or with foreign nations, falls within the description of the words of the statute with regard to interstate commerce, and there is also included in that language that kind of trade in commodities among the States, or with foreign nations, which is not confined to their mere transportation. It includes their purchase and sale. (*United States* v. *The Trans-Missouri Freight Association*, 166, 290.)

Where a State recognizes the manufacture, sale, and use of intoxicating liquors as lawful, it can not discriminate against bringing such articles in and importing them from other States for the purpose of sale. (*Scott* v. *Donald*, 165 U. S., 58.)

Contracts to buy, sell, or exchange goods to be transported among the several States, the transportation and its instrumentalities and articles bought, sold, or exchanged for the purpose of such transit among the States, or put in the way of transit, may be regulated by Congress, because they form part of interstate trade or commerce.

The buying, selling, and transportation incident thereto, constitute commerce. (*United States* v. *E. C. Knight Co.*, 156 U. S., 1.)

Commerce undoubtedly is traffic, but it is something more; it is intercourse. It includes an exchange of goods—the bringing of them from the seller to the buyer.

*Lehigh Valley Railroad Co.* v. *Pennsylvania*, 145 U. S., 192.
*Wilkerson* v. *Rahrer*, 140 U. S., 545.

The power to regulate interstate commerce is solely in the General Government, and it is an essential part of that regulation to prescribe the regular means for accomplishing the introduction and incorporation of articles in and with the mass of property in a country or State. (*Wilkerson* v. *Rahrer*, 140 U. S., 545.)

Commerce with foreign countries and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation and transportation, and transit of persons and property, as well as the purchase, sale, and exchange of commodities.

*McCall* v. *California*, 136 U. S., 104.
*Bowman* v. *C. & N. R. R. Co.*, 125 U. S., 465.

Interstate commerce includes all that portion of commerce with foreign countries, or between the States, which consists in the transportation, purchase, sale, and exchange of commodities.

Interstate commerce is a term of the largest import. It comprehends intercourse for the purposes of trade in any and all its forms, including the transportation, pur-

chase, sale, and exchange of commodities between citizens of the different States. (*Welton* v. *Missouri*, 91 U. S., 275.)

Commerce consists in selling the superfluity, in purchasing articles of necessity, as well productions as manufactures; in buying from one nation and selling to another, or in transporting the merchandise from the seller to the buyer to gain freight.

*Passenger Cases*, 7th Howard, 416.
*The P. & R. R. Co.* v. *Pennsylvania*, 15 Wallace, 232.

Interstate commerce consists in the transportation, purchase, sale, and exchange of commodities between the States. (*Vandercook* v. *Vance*, 80 Federal Reporter, 786.)

The word "commerce," as used in the act of July 2, 1890, has a broader meaning than the word "trade."

Commerce among the States consists of intercourse and traffic between their citizens, and includes the transportation of persons and property, as well as the purchase, sale, and exchange of commodities. (*United States* v. *Cassidy*, 67 Federal Reporter, 698.)

The statute of the State of Virginia prohibiting the sale in the State of meat from the carcase of an animal slaughtered in another State and then shipped into Virginia is unconstitutional and void. The right to import carries with it the right to sell, and the exclusive jurisdiction of Congress does not cease until after sale. (*N. and W. R. R. Co.* v. *Pennsylvania*, 136 U. S., 114.)

Brimmer v. Rebman, 138 U.S. 78.

The statute of Minnesota prohibiting the introduction into that State of the meat of an animal not inspected

twenty-four hours before slaughter is unconstitutional and void, as being an unwarranted interference with interstate commerce. The people of Minnesota have the right to bring into that State for the purpose of sale meat taken from animals slaughtered in other States without being so inspected. And having the right to introduce into the State they have also the right of sale. (*Minnesota* v. *Barber*, 136 U. S., 313.)

A State can not levy a tax or impose any other restrictions upon the citizens or inhabitants of other States for selling, or seeking to sell, their goods in such State. (*Robbins* v. *Shelby County*, 120 U. S., 489.)

The statute of the State intended to regulate or tax, or to impose any other restrictions upon the transmission of persons or property, or telegraphic messages from one State to another, are void.

*St. L. & P. R. R. Co.* v. *Illinois*, 118 U. S., 557.
*Pickard* v. *Pullman Southern Car Co.*, 117 U. S., 34.

No State can impose a tax on persons engaged in the sale of goods in such State, which are introduced into the State from other States.

*Walling* v. *The State of Michigan*, 116 U. S., 446.
*Cook* v. *Pennsylvania*, 97 U. S., 566.
*Hall* v. *DeCuir*, 95 U. S., 485.
*The H. & St. J. R. R. Co.* v. *Husen*, 95 U. S., 465.
*Welton* v. *Missouri*, 91 U. S., 275.
*Ward* v. *Merrill*, 12 Wallace, 418.
*In re Rebolt*, 77 Federal Reporter, 587.

The statute of Iowa prohibiting the manufacture or sale of cigarettes within that State is void as an unwarrantable interference with interstate commerce, in so far

as it applies to the sale of cigarettes imported into the State and sold in original packages. (*Iowa* v. *McGregor*, 76 Federal Reporter, 956.)

The statute of South Carolina, in so far as it prohibits the introduction into that State and the sale in original packages of liquors from other States, is an interference with interstate commerce and void. (*Donald* v *Scott*, 74 Federal Reporter, 859.)

No State can, under any pretext whatever, interfere with the right of any person who engages in interstate commerce, whether in the sale of goods introduced into the State from other States, or in soliciting orders for goods to be so introduced.

*Ex parte Loeb*, 72 Federal Reporter, 657.
*Southern Railway Co.* v. *Asheville*, 69 Federal Reporter, 359.
*Ex parte Hough*, 69 Federal Reporter, 330.
*In re Minor*, 69 Federal Reporter, 233.
*Altman, Miller & Co.* v. *Holder*, 68 Federal Reporter, 467.
*Ex parte Scott*, 66 Federal Reporter. 45.
*In re Schechter*, 63 Federal Reporter, 695.
*In re Mitchell*, 62 Federal Reporter, 576.
*In re Worthen*, 58 Federal Reporter, 467.
*In re Rozelle*, 57 Federal Reporter, 155.
*In re Ware*, 53 Federal Reporter, 783.
*In re Sanders*, 52 Federal Reporter, 802.
*In re McAlister*, 51 Federal Reporter, 282.
*In re Nichols*, 48 Federal Reporter, 164.
*In re Tyerman*, 48 Federal Reporter, 167.
*In re Houston*, 47 Federal Reporter, 539.
*In re Kimmel*, 41 Federal Reporter, 775.
*Adams Express Company* v. *Ohio State Auditor*, 165 U. S., 194.

*Osborne* v. *Florida*, 164 U. S., 650.
*Brennan* v. *City of Titusville*, 153 U. S., 289.
*Harmon* v. *Chicago*, 147 U. S., 396.
*Crutcher* v. *Kentucky*, 141 U. S., 47.
*Pullman Palace Car Company* v. *Pennsylvania*, 141 U. S., 18.
*McCall* v. *California*, 136 U. S., 104.
*Asher* v. *Texas*, 128 U. S., 129.
*Philadelphia and Southern S. S. Co.* v. *Pennsylvania*, 122 U. S., 326.
*Corson* v. *Maryland*, 120 U. S., 502.
*Robbins* v. *Shelby County*, 120 U. S., 489.
*Moran* v. *New Orleans*, 112 U. S., 69.
*Lelout* v. *Mobile*, 127 U. S., 640.
*Daniel Ball* v. *United States*, 10 Wallace, 557.
*Sinnot* v. *Davenport*, 22 Howard, 227.
*Smith* v. *Turner*, 7 Howard, 283.
*Webster* v. *Bell*, 68 Federal Reporter, 183.

The traffic in these cattle located in the various pens, and where they are delivered from pens situate in Kansas to purchasers across the line in Missouri, and where they are sold from pens in Missouri and delivered to purchasers across the line in Kansas, is interstate traffic.

The mere fact that these cattle cross an imaginary line from Kansas into Missouri, and from Missouri into Kansas, is immaterial. The traffic in them is interstate, regardless of the distance they travel.

The Covington and Cincinnati Bridge was built across the Ohio River, connecting the States of Kentucky and Ohio.

Interstate commerce means commerce between the States, and applies to all commerce which crosses the State line, regardless of the distance from which it comes,

or to which it is bound before or after crossing such State line, and the daily passing of people across this Covington and Cincinnati bridge was as truly interstate commerce as if they were shipping cargoes of merchandise from New York to Liverpool.

*Gibbons* v. *Ogden*, 9 Wheaton, 1.
*Covington and Cincinnati Bridge Company* v. *Kentucky*, 154 U. S., 204.

It matters not that the transportation is made in ferryboats which pass between the States. The means of transportation of persons and freight between the States does not change the character of the business as one of commerce, nor does the time within which the distance between the States may be traversed.

Commerce among the States consists of intercourse and traffic between their citizens, and includes the transportation of persons and property and the navigation of public waters for that purpose, as well as the purchase, sale, and exchange of commodities. (*Gloucester Ferry Co.* v. *Pennsylvania*, 114 U. S., 196.)

All those cattle arriving at the Kansas City stock yards which are shipped to said yards on through bills of lading, with privilege of sale at Kansas City, and in event they are not sold to be reshipped, while at the Kansas City stock yards do not lose their quality of interstate commerce. (*United States* v. *Hopkins*, 82 Federal Reporter, 529.)

Goods in course of transportation through a State, although detained for a time within the State by low water or other causes of delay, are in course of commercial transportation. (*Coe* v. *Errol*, 116 U. S., 517.)

## III.

The conduct and method of doing business by the members of this Traders' Live Stock Exchange is an interference with interstate commerce, and the association is illegal.

The right to follow any of the common occupations of life is an inalienable right. (*Allgeyer* v. *Louisiana*, 156 U. S., 578.)

Competition, free and unrestricted, is the general rule which governs all the ordinary pursuits and transactions of life. (*United States* v. *Trans-Missouri Freight Association*, 166 U. S., 290.)

If there be any competition, the extent of the charge for the service will be seriously affected by that fact. Competition will itself bring charges down to what may be reasonable, while in the case of an agreement competition is allowed no play. (*United States* v. *Trans-Missouri Freight Association*, 166 U. S., 290.)

All authorities agree that in order to vitiate a contract or combination it is not essential that its result should be a complete monopoly. It is sufficient if it really tends to that end, and to deprive the public of the advantages which flow from free competition. (*United States* v. *E. C. Knight Co.*, 156 U. S., 1.)

To carry on interstate commerce is a right which every citizen of the United States is entitled to exercise under the Constitution and laws of the United States. (*Crutcher* v. *Kentucky*, 141 U. S., 47.)

While the Constitution does not provide that interstate commerce shall be free, yet, by the grant of this

exclusive power to regulate it, it was left free except as Congress might impose restraint, and it has been determined that the failure of Congress to exercise this exclusive power in any case is an expression of its will that the subject shall be free from restriction or imposition. (*Wilkerson* v. *Rohrer*, 140 U. S., 545.)

All contracts and agreements in restraint of trade are void as against public policy: First, because of the injury to the public by being deprived of the restricted party's industry. The other is the injury to the party himself by being prescribed from pursuing his occupation, and thus being prevented from supporting himself and family. (*Gibbs* v. *Gas Company*, 130 U. S., 396.)

The failure of Congress to make regulation in reference to subjects of interstate commerce indicates its will that the subject shall be left free and untrammeled.

*Robbins* v. *Shelby County*, 120 U. S., 489.
*Welton* v. *Missouri*, 91 U. S., 275.

The primary object of the act of Congress of July 2, 1890, is to prevent the destruction of legitimate and healthy competition in interstate commerce by the engrossing and monopolizing of the commerce for commodities. (*United States* v. *Cassidy*, 62 Federal Reporter, 698.)

In business or trading combinations they may even temporarily, or perhaps permanently, reduce the price of the article traded in by reducing the expense inseparable from the running of many different companies for the same purpose. Trade or commerce, under those circumstances, may nevertheless be badly and unfortunately restrained by driving out of business the small dealers and worthy men whose lives have been spent

therein, and who might be unable to readjust themselves to their altered surroundings. Mere reduction in the price of the commodity dealt in might be dearly paid for by the ruin of such a class and the absorption of control over one commodity by an all-powerful combination; and the result, in any event, is unfortunate for the country, by depriving it of the services of a large number of small but independent dealers, who were familiar with the business and who had spent their lives in it, and who supported themselves and their families therefrom. It is antagonistic to the substantial interests of the country that any one commodity should be within the sole power and subject to the sole will of one powerful combination. (*United States* v. *Trans-Missouri Freight Association*, 166 U. S., 290.)

The term "contract in restraint of trade" in the act of July 2, 1890, includes all contracts of that nature, whether valid or otherwise, and not alone that kind which was invalid and unenforcible as being in unreasonable restraint of trade. (*United States* v. *Trans-Missouri Freight Association*, 166 U. S., 290.)

In various cases in which there have been proceedings to restrain strikes, it has been held that a combination between laborers joining in labor union to prevent the employment of persons not members of said unions was an interference with interstate commerce. (*United States* v. *Workingmen's Amalgamated Council of New Orleans*, 54 Federal Reporter, 994.)

It has been decided in cases above referred to, and numerous others, that the States could not exact a license fee from one engaged in interstate commerce, and yet

this unincorporated association demands a fee of $500 before one can become a trader or speculator on these yards in the cattle received thereat. This association exacts that which the Commonwealth has no authority to demand. The charges in the bill, abundantly supported by the affidavits, show that this association has absolutely destroyed competition between the traders and speculators in the traffic in these cattle; they have driven from the yards and from the pursuit of their usual business all those traders and speculators who would not become members of their association; they have boycotted commission firms who, in the exercise of an inalienable right, had dared to sell cattle to and to purchase them from any trader or speculator not a member of this association; they have prohibited their own members, as shown by their by-laws, from forming a partnership with any trader or speculator who was not a member of their association; as shown by their by-laws they have prohibited their members from employing any person either to buy or sell cattle for them who was not a member of said association. A more illegal and bolder combination in restraint of trade was never conceived nor carried into execution.

We respectfully submit that upon the record in this case the decree of the circuit court should be affirmed.

JOHN K. RICHARDS,
*Solicitor-General.*

JOHN R. WALKER,
*United States Attorney.*